

**PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD,
IOWA COMPREHENSIVE[591]**

Adopted and Filed

Rule making related to waivers

The Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby amends Chapter 16, “Waivers and Variances,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 455G.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 17A.9A.

Purpose and Summary

The purpose of this rule making is to update the Board’s administrative rules in accordance with changes included in 2020 Iowa Acts, House File 2389, section 10. The changes call for removal of the word “variance” when the word is used in relation to “waiver.”

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on May 19, 2021, as **ARC 5637C**. No comments from the public were received; however, a comment was received from the Administrative Code Editor regarding language in rule 591—16.5(17A). The recommended change was to remove the reference “or on its own motion” from the rule. That change has been made in Item 3 of this adopted rule making, and Item 3 of the Notice has been renumbered as Item 4. In addition to the change recommended by the Administrative Code Editor, one additional change has been made to add a new Item 5 to make the language in rule 591—16.17(17A) consistent with the requirements in Iowa Code section 17A.9A for agency reporting of waiver information.

Adoption of Rule Making

This rule making was adopted by the Board on July 5, 2021.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 591—Chapter 16.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or

group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on September 15, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend **591—Chapter 16**, title, as follows:

WAIVERS AND VARIANCES

ITEM 2. Amend rule 591—16.1(17A) as follows:

591—16.1(17A) Definition. The term “waiver” as used in this chapter means a described waiver ~~or variance~~ from a specific rule or set of rules of this board applicable only to an identified person on the basis of the particular circumstances of that person.

ITEM 3. Amend rule 591—16.5(17A) as follows:

591—16.5(17A) Criteria for a waiver. The board may issue an order, in response to a completed petition, ~~or on its own motion~~, granting a waiver from a rule adopted by the board, in whole or in part, as applied to the circumstances of a specified person, if the board finds that the granting of such a waiver would not exceed the authority for granting waivers contained in Iowa Code section 17A.9A, that the waiver would not prejudice the substantial legal rights of any person, and either that:

1. The application of the rule to the person at issue does not advance, to any extent, any of the purposes for the rule or set of rules; or
2. All of the following criteria have been met:
 - The application of the rule or set of rules to the person at issue would result in an undue hardship or injustice to that person; and
 - The waiver on the basis of the particular circumstances relative to the specified person would be consistent with the overall public interest; and
 - The waiver, if related to administrative deadlines, would not jeopardize the overall goals of the deadline as established.

In determining whether a waiver would be consistent with the public interest, the board shall consider whether, if a waiver is granted, the public health, safety, and welfare will be adequately protected by other means that will ensure a result that is substantially equivalent to full compliance with the rule.

ITEM 4. Amend rule 591—16.8(17A) as follows:

591—16.8(17A) Contents of petition. A petition for a waiver shall include the following information where applicable and known to the requester:

1. to 4. No change.
5. A history of any prior contacts between the petitioner and the board relating to the activity affected by the proposed waiver ~~or variance~~, including any notices of violation, contested case hearings, or investigative reports relating to the activity within the last five years.
6. No change.
7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the granting of a waiver ~~or variance~~.
8. to 11. No change.

ITEM 5. Amend rule 591—16.17(17A) as follows:

591—16.17(17A) Record-keeping Submission of waiver information. ~~Subject to the provisions of Iowa Code section 17A.3(1)“e,” the~~ The board shall maintain a record of all orders granting and denying waivers ~~under this chapter~~ submit information about granted and denied waivers to the Internet site

pursuant to Iowa Code section 17A.9A(4) within 60 days. All final rulings in response to requests for waivers shall be indexed and copies distributed to members of the administrative rules review committee upon request. All final rulings shall also be available for inspection by the public at the address identified in 591—1.4(455G) during regular business hours. The submission shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule and a citation to the statutory provisions implemented by the rules. The report submission shall include a general summary of the reasons justifying the board's actions on waiver requests and, if practicable, shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself and the extent to which the granting of the waiver has established a precedent for additional waivers.

[Filed 7/19/21, effective 9/15/21]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/11/21.